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**The New Zealand Law Foundation
Ethel Benjamin Commemorative Address 2007**

'New Questions' About Women's Access to the Legal Professions*

Mary Jane Mossman**

I. Writing the Biographies of Women in Law

In her 1999 essay about the first women to become historians at the end of the 19th century, Joan Wallach Scott suggested that exploring women's access to the professions requires us to ask 'new questions':

How are those who [first] cross the threshold received? If they belong to a group different from the group already 'inside,' what are the terms of their incorporation? How do the new arrivals understand their relationship to the place they have entered? What are the terms of the identity they establish?¹

Scott's suggestion about the need for new questions about women's access to the professions is clearly reflected in a flourishing feminist literature about how to write the biographies of women. For example, Gerda Lerner argued that women's biographies must inevitably confront gendered social realities to take account of how women 'function[ed] in [a] male-defined world *on their own terms*'.² Lerner's insight may be particularly relevant to the first women lawyers, who necessarily engaged with issues of gender when they tried to gain admission to the 'gentleman's profession' of law at the end of the nineteenth century.³ As the first women to 'cross the threshold' of the legal professions, they functioned in the 'gentleman's profession' of law by adopting a number of different strategies, depending on how they were accepted by those already on 'the inside,' how they understood their roles as lawyers, and how they established identities as 'women' who were also 'legal professionals'.⁴

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¹ Joan Wallach Scott, 'American Women Historians, 1884-1894' in JW Scott (ed), *Gender and Politics of History* (New York, Columbia University Press, 1999) 179.

² Gerda Lerner, *The Majority Finds its Past: Placing Women in History* (New York, Oxford University Press, 1979) at 148-9.

³ See RD Gidney and WPJ Millar, *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (Toronto, University of Toronto Press, 1994).

⁴ As Barbara Allen Babcock suggested, women's strategies for functioning in 'a male-defined world on their own terms' were often contradictory and ambiguous; as she concluded in her biography of Clara Shortridge Foltz, the first woman lawyer in California:

Disjunction – between what she said and did, what she aspired to and achieved, and even between what she most fervently proclaimed at one

In reflecting on such challenges for women's biographies, June Purvis, a biographer of the British suffragette Emmeline Pankhurst, argued that traditional approaches to biography, the tendency to '[weave] a seamless narrative, creating coherence and causal connections,' fails to reflect the nuances of shifting historical contexts as well as the fragmentary nature of women's individual experiences.⁵ In this context, Purvis argued that it was not appropriate to approach a biographical project using the metaphor of a microscope, 'where the more information you collect about your subject, the closer [you are] to "the truth;"' instead, she recommended conceptualizing women's lives in terms of a kaleidoscope – an approach that better captures the always-changing and interconnected patterns in women's lives.⁶ As Liz Stanley claimed, approaching biography as kaleidoscope means that 'each time you look you see something rather different, composed certainly of the same elements, but in a new configuration.'⁷ Particularly for the first women lawyers, who were challenging both the traditional roles of women and also the traditions of a male legal profession, this metaphor of kaleidoscope may provide a way of grappling with Joan Wallach Scott's 'new questions' about women's access to the professions.

In this presentation, I want to reflect on some of these 'new questions' concerning women and access to the professions, and how a kaleidoscope metaphor may be useful in writing women lawyers' biographies. In doing so, I will focus on the biographies of four 'women in law' in 1897, the same year in which Ethel Benjamin gained admission to the legal profession in New Zealand. In exploring how they and Ethel Benjamin 'crossed the threshold,' how they were received, and how they established professional identities, I want to reflect on their experiences to suggest how they also point to 'new questions' about the relationships between the history of women and the history of the professions.

II. Women and the Legal Professions in 1897

Ethel Benjamin completed all the requirements for admission to the bar in late 1896, and was formally admitted to the legal profession in New Zealand in May

point and another – is typical of Foltz's life... Because of her ambivalence about what women should do and be, and because she tried so many things professionally and personally, her life and thought have a fractured, sometimes even frantic, quality...

See Barbara Allen Babcock, 'Reconstructing the Person: the Case of Clara Shortridge Foltz' in Susan Groag Bell and Marilyn Yalom (eds), *Revealing Lives: Autobiography, Biography and Gender* (Albany, State University of New York Press, 1990) 131 at 139.

⁵ June Purvis, *Emmeline Pankhurst: A Biography* (London and New York, Routledge, 2002) at 6.

⁶ Purvis, note 5 at 7.

⁷ Liz Stanley (ed), *The Auto/Biographical I: The Theory and Practice of Feminist Auto-Biography* (Manchester, Manchester University Press, 1992). See also M Maynard and J Purvis, *Researching Women's Lives from a Feminist Perspective* (London, Taylor & Francis, 1994).

1897.⁸ By 1897, women had been gaining admission to the bar in several parts of the United States for almost three decades; apparently politicized by equality debates during and after the Civil War, American women had been steadily gaining access to higher education, including legal education.⁹ As Nancy Cott suggested, moreover, the high rates of mortality on both sides in the Civil War changed the demographic circumstances significantly: 'the assumption that every woman would become a wife became questionable, perhaps untenable.'¹⁰ Thus, while some courts and legislatures continued to refuse women's applications for admission to state legal professions, others were more welcoming, particularly in the west.¹¹ In this context, Arabella Mansfield became the first woman to gain admission to a state bar in 1869 when a court in Iowa interpreted the words 'male persons' in the statute as inclusive of women;¹² and in the same year, the state of Wyoming became the first to grant women's suffrage in state elections.¹³ Thus, although there continued to be opposition in some states, there were nearly three hundred women lawyers in the United States by the end of the nineteenth century.¹⁴

All the same, Benjamin's success in obtaining entry to the legal profession in New Zealand in 1897 was highly significant because women were not permitted to become either barristers or solicitors in Britain at that time.¹⁵ Interestingly, Benjamin's admission occurred just a few months after Clara Brett Martin was called to the bar in Ontario, another part of the British Empire, in February 1897.¹⁶ Clearly, Martin's admission in Ontario may have been influenced by

⁸ Carol Brown, 'Ethel Benjamin: New Zealand's First Woman Lawyer' (BA Hons Thesis, University of Otago, 1985) at 26. See also Louis Frank, *La Femme-Avocat: Exposé Historique et Critique de la Question* (Paris, V Giard & E Brière, 1898) at 70; and Gill Gatfield, *Without Prejudice: Women in the Law* (Wellington, Brookers Ltd, 1996).

⁹ Barbara Harris, *Beyond Her Sphere: Women and the Professions in American History* (Westport, Conn, Greenwood Press, 1978) at 98–9; Jill Ker Conway, 'Perspectives on the History of Women's Education in the United States' (1974) 14 *History of Education Quarterly* 5–7; and Jane Rendall, *The Origins of Modern Feminism: Women in Britain, France and the United States 1780–1860* (Chicago, Lyceum Books, 1985).

¹⁰ Nancy F Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA, Harvard University Press, 2000) at 78–9.

¹¹ Mari Matsuda, 'The West and the Legal Status of Women: Explanations of Frontier Feminism' (1985) 24 *Journal of the West* 47.

¹² Karen B Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* (New York, Random House, 1986) at 12; Joan Hoff, *Law, Gender, and Injustice: A Legal History of US Women* (New York, University Press, 1991) at 162–3; and Ada M Bittenbender, 'Women in Law' in Annie Nathan Meyer (ed), *Woman's Work in America* (New York, Henry Holt and Company, 1891) at 222.

¹³ Morello, note 12 at 11.

¹⁴ Frank, note 8. See also Virginia Drachman, *Sisters in Law: Women Lawyers in Modern American History* (Cambridge, MA, Harvard University Press, 1998).

¹⁵ Women became entitled to become barristers and solicitors in the UK as a result of the legislation enacted in 1919: see Sex Disqualification (Removal) Act, 1919, 9 & 10 Geo 5, c 71.

¹⁶ Theresa Roth, 'Clara Brett Martin – Canada's Pioneer Woman Lawyer' (1984) 18 *The Law Society Gazette* 323; Constance Backhouse, "'To Open the Way for Others of my Sex': Clara Brett Martin's Career as Canada's First Woman Lawyer' (1985) 1

geographical proximity to the United States, but other explanations are required in New Zealand. Moreover, although Benjamin is often referred to as the second woman in the British Empire to gain admission to the bar, she herself seems to have been aware that there were two other women in law in 1897, one in India as well as Martin in Canada; as Benjamin explained in an interview with Kate Sheppard for the *White Ribbon*, the publication of the Women's Christian Temperance Union, in August 1897:

... I am the first lady lawyer south of the line, but not the first British woman lawyer. There is, you know, one in India and another in Canada. I always had a liking for the profession. I knew I should have to take up something in order to be self-supporting, and the Legal Profession had more charms for me than any other.¹⁷

The Indian woman referred to by Benjamin was Cornelia Sorabji, who had returned to India to do legal work after completing the BCL exams at Oxford in 1892, the first woman to do so.¹⁸ Thus, it seems that there were at least three women in the British Empire, including Benjamin, for whom 1897 was an important year in the history of women and the history of legal professions.

Interestingly, and apparently unbeknownst to Benjamin, there was also a fourth British woman, Eliza Orme, who was 'practising law' in Chancery Lane in London in 1897. Indeed, Orme had established her practice, doing conveyancing and patent work as well as estates, as early as 1875, and was a well-known public person by 1897,¹⁹ even though women were not yet eligible to become barristers or solicitors in Britain. Moreover, beyond the British Empire, there was another significant challenge to male exclusivity in the legal professions in 1897 when Jeanne Chauvin presented an application for admission to the Paris bar in November that year;²⁰ although Chauvin's application was rejected by the court, using arguments based on the civil code, the French National Assembly enacted amending legislation just three years later,²¹ so that French women attained eligibility for admission to the bar in 1900, nearly two decades before women in Britain became entitled to do so after World War I. Thus, although Martin in Ontario and Benjamin in New Zealand were the only women to gain formal admission to the bar in 1897, Orme in Britain and Sorabji in India appeared

Canadian Journal of Women and the Law 1; and Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto, The Osgoode Society, 1991).

¹⁷ (August 1897) 26 *White Ribbon* 1–2.

¹⁸ 'A Pioneer in Law' (15 October 1896) *Englishwoman's Review* (ns) at 217–18. See also Suparnu Gooptu, *Cornelia Sorabji: India's Pioneer Woman Lawyer* (New Delhi, Oxford University Press, 2006).

¹⁹ Leslie Howsam, 'Sound-Minded Women: Eliza Orme and the Study and Practice of Law in Late-Victorian England' (1989) 15:1 *Atlantis* 44.

²⁰ Frank, note 8. See also Anne Boigeol, 'French Women Lawyers (Avocates) and the "Women's Cause" in the First Half of the Twentieth Century' (2003) 10:2 *International Journal of the Legal Profession* 193.

²¹ *Loi ayant pour objet de permettre aux femmes munies des diplômes de licencié en droit de prêter le serment d'avocat et d'exercer cette profession*: Dalloz, 1900–4–81, cited in Edmée Charrier, *L'Évolution Intellectuelle Féminine* (Paris, Éditions Albert Mecheleinck, 1931) at 336.

to be 'practising law' without formal admission. Moreover, Chauvin's formal challenge in 1897 in Paris eventually resulted in success for women lawyers according to the legislation enacted in 1900.

Significantly, Chauvin's case in France in 1897 was the subject of a treatise, published in Paris in support of her application, which documented the status of women lawyers all over the world.²² The author of the treatise was a Belgian barrister named Louis Frank, who championed a number of progressive causes, including women's equality, at the end of the 19th century. In supporting Chauvin's application for admission to the bar, Frank not only assembled the legal arguments, but also documented the experiences of women lawyers in a number of different parts of the world, based on his correspondence with many of them, including Ethel Benjamin. However, before turning to explore the experiences of Ethel Benjamin, I want to examine the context in 1897, when these four other women were also claiming the right to practise law.

Clara Brett Martin:²³ Shortly after the Law Society in Ontario established its 'law school' in 1889, Clara Brett Martin submitted an application to become a student in 1891. Martin was the youngest of twelve children in a farming family just outside Toronto; she attended the University of Toronto, graduating in 1890 with a degree in mathematics. When she decided to pursue law studies, her application stated that even though she was a woman, she was relying on the 'broad spirit of liberality and fairness that characterizes members of the legal profession' to be accepted as a student at law. In retrospect, her confidence in the Law Society's liberality and fairness seems to have been entirely misplaced, as her application was summarily rejected. Apparently undaunted, Martin sought political support for a legislative amendment to permit women to become solicitors, and then lobbied for a second legislative amendment to allow women's admission to the bar. Even after the second amendment was enacted in 1895, however, the Law Society continued to resist Martin's efforts, and the necessary rules to permit women members of the legal profession in Ontario were not finally adopted by the Society until late 1896. Martin was then formally admitted to the bar of Ontario on 2 February 1897. At the time, the *Canada Law Journal*, which had strenuously opposed women's admission to the legal profession for years, published its congratulations on Martin's accomplishment, while simultaneously expressing the hope that she would be 'a brilliant exception to the time-honoured rule' of law as a 'gentleman's profession.'²⁴ After just a few years in a small law firm, Martin established her own general practice in Toronto, and became a well-known public figure after she was elected to the Toronto Board of Education; however, she died suddenly of a heart attack in 1923 at the age of forty-nine. She never married.

Cornelia Sorabji:²⁵ Cornelia Sorabji was one of several daughters and one son, borne to a Parsi father and Hindu mother, both of whom had converted to Christianity; indeed, Sorabji's father was in charge of a Christian mission in

²² See Frank, note 8.

²³ MJ Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Oxford, Hart Publishing, 2006) at chapter 2. See also note 16.

²⁴ (1897) 33:4 *Canada Law Journal* 1.

²⁵ Mossman, note 23 at chapter 5. See also note 18.

Pune, near Mumbai. Sorabji was an excellent student and eventually qualified for a prestigious scholarship to study at Oxford, but the scholarship was then withdrawn because she was female. Although her parents were not wealthy, they were well-connected to educational philanthropists in Britain, probably through their Christian activities; as a result, Sorabji obtained a 'substitute scholarship' and admission to Oxford through the generosity of a number of British patrons, particularly Lord Arthur and Lady Mary Hobhouse. With support from several Oxford academics, including Benjamin Jowett and Frederick Pollock, Sorabji became the first woman to complete the BCL examinations at Oxford in 1892, although (as a woman) she was not eligible to obtain the degree. The following year, she returned to India and began to do legal work, first with a firm of solicitors and then in a criminal defence office.

It was in the latter context that Sorabji became the first woman to appear before a British judge, representing an accused in a murder case, in Pune in 1896. Her appearance for the accused was authorized by the Criminal Procedure Code, which permitted an accused to be represented by 'any person' (defined as male or female).²⁶ As a British report stated:

For the first time in any land under the rule of the British flag, a woman has pleaded before a British judge, and, strange to tell, this new thing comes from Conservative India... Of course there was opposition to such a novel departure as a Portia in Conservative India, but she soon showed the great need for a woman lawyer... She has pleaded several cases [in the native courts] and won them all. But her last great achievement was in a *British* court in Poona...²⁷

In spite of Sorabji's accomplishment, of course, she had not gained formal admission to the bar in India at the time when she participated in this case; her entitlement to provide legal representation was based on the exercise of discretion by the presiding judge pursuant to the language of the Criminal Procedure Code. However, in late 1896, Sorabji wrote and passed the LLB exams of the University of Bombay, which entitled her to be admitted to the Indian bar. Thus, in February 1897, Sorabji wrote to Lady Hobhouse to report that:

The final Bachelor of Law Lists are just out, and I am now a fully fledged LLB... I shall be convoked shortly, & be given a gorgeous scarlet hood. The best of the examination is that it is the regular Bar Examination in India, & *I shall now be admitted to the Courts as of right... The question is fought at last I hope for all women.*²⁸

Unfortunately, even though Sorabji had completed the exams in accordance with the rules for admission to the bar in India, she was eventually denied formal admission because she was a woman.

As her letters and diaries reveal, moreover, she continued to encounter a number of setbacks in her efforts to engage in legal work; indeed, it was not until nearly three decades later that she finally received her BCL degree from

²⁶ Code of Criminal Procedure (25 of 1861), s 4. See also Mossman, note 23 at 214. This decision was rendered thirty-four years before the celebrated *Persons Case* in the Privy Council: see *Edwards v AG of Canada* [1930] AC 124.

²⁷ *Englishwoman's Review*, note 18.

²⁸ Sorabji papers, British Library F/165/16: letter to Lady Mary Hobhouse, 3 February 1897.

Oxford and was formally admitted as a barrister after World War I. In the intervening years, she worked in an Imperial post as Lady Assistant to the Court of Wards, a position which required her to supervise legal arrangements for the *Purdahnashins*, women (and children) who were 'wards' in northern India. Overall, Sorabji's experience was one of initial success, followed by a long period of struggle to find work and eventually to gain formal admission to the bar. By 1922, when she was admitted to the bar in Britain and then in India, she was fifty-four years old and it appears that she did not practise at the bar for very long. At the same time, it seems that she needed work to support herself financially, and she published several books and articles throughout her life; she never married. Sorabji lived through the blitz in London during World War II, although she was old, almost blind and virtually alone. She died in London in 1954 at the age of eighty-eight.

Eliza Orme:²⁹ Eliza Orme was the daughter of upper middle-class parents who encouraged women's education, and she was among the first women to study at the University of London. After apprenticing with a barrister at Lincoln's Inn, Orme and another woman law student established an independent law office in Chancery Lane in 1875, successfully engaging in conveyancing, patents and estate work for several decades. As the *Englishwoman's Review* noted:

The two ladies who have lately opened an office in Chancery Lane, are not, it is true, entered as barristers at any of the Inns of Court... But the capacity of these ladies is already well proved, and so much work has already passed into their hands, that we are told they have been compelled from want of time to decline some. It is certain that there must be some cases in which women would rather consult a woman 'counsel learned in the law' than any man...³⁰

Thus, although other women in Britain initiated litigation about their exclusion from the legal professions at the end of the 19th century, Orme chose to 'practise law' by engaging in legal work 'at the boundaries' of the legal professions; clearly, these boundaries were relatively fluid, even contested, in the last decades of the nineteenth century, but the legal work that Orme chose to do was not yet entirely regulated by the legal professions. Although Orme eventually became the first woman to obtain a law degree at the University of London in 1888, she never sought formal admission to the legal professions; perhaps because she did not expressly challenge the 'gentleman's profession' of law, she regularly received referrals and other work from the bar, particularly the conveyancing barristers at Lincoln's Inn.

As her published writing in books and articles reveals, Orme was an educated and independent woman; moreover, as an active supporter of the Liberal Party, she was appointed to the Royal Commission on Labour, and then to the Departmental Committee on Prison Conditions, in the 1890s. Indeed, a George Bernard Shaw biographer argued that Orme was the model for Vivie, the cigar-smoking actuary in Shaw's play, *Mrs Warren's Profession*; and Shaw's stage directions for Vivie's office bear a quite remarkable resemblance to a

²⁹ Mossman, note 23 at chapter 3. See also note 19.

³⁰ 'The Year "That's Awa"' (December 1875) 6 *Englishwoman's Review* 533-4; and 'Woman as Lawyers' (November 1875) 6 *Englishwoman's Review* 510.

contemporary description of Orme's office in Chancery Lane in 1888.³¹ Thus, by the time that Benjamin, Martin and Sorabji were all seeking formal admission to the bar in 1897, Orme had been 'practising law' for more than two decades; she was also financially self-supporting and never married. Although the historical record is a little sparse, it seems that Orme retired from legal practice early in the 20th century (in her late 50s), almost two decades before women in the UK became eligible to become lawyers after World War I; sadly, when she died in 1937 at the age of eighty-eight, her obscurity was so complete that no one was available to write her obituary.

Jeanne Chauvin.³² In the 1880s and 1890s, women were gaining access to higher education in a number of countries of Europe, and as women gained access to university education, they began to study law and to seek admission to the bar. In the 1880s, for example, Lydia Poët in Italy and Marie Popelin in Belgium had both attempted to gain admission to the bar, but the courts in both jurisdictions had rejected their applications based on the provisions of their respective civil codes.³³ These two unsuccessful applications formed the backdrop to Jeanne Chauvin's application for admission to the Paris bar in 1897. Chauvin was the daughter of a notary, who died when she was still quite young; her widowed mother moved to Paris with her two children to enable them to have better access to higher education. Thus, Chauvin obtained a doctorate in law at the University of Paris in 1892, an accomplishment which was accompanied by a near-riot on the day of her formal defence.³⁴ Although she succeeded in gaining the doctorate, only the second woman to do so at the University of Paris,³⁵ Chauvin did not apply for admission to the bar; since Marie Popelin's claim in Belgium had been rejected, and because the wording of the civil codes in Belgium and France was so similar, Chauvin apparently believed that she had little hope of success. As a result, Chauvin earned her living by teaching in girls' high schools in Paris, and in 1895, she published a coursebook on law for high school students.³⁶

A few years later, however, the Belgian barrister Louis Frank persuaded Chauvin to submit an application for admission as an *avocat* in Paris; in the

³¹ Michael Holroyd, *Bernard Shaw, vol I, The Search for Love 1856-1898* (London, Chatto & Windus, 1988) at 295; and Jessie E Wright, 'Letter to the Equity Club,' 23 April 1888, in Virginia Drachman, *Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club 1887-1890* (Ann Arbor, University of Michigan Press, 1993) 141 at 144.

³² Mossman, note 23 at chapter 6. See also note 20.

³³ Mossman, note 23 at chapter 6. See also Frank, note 8; and JC Albigetti, 'Portia Ante Portas: Women and the Legal Profession in Europe, ca 1870-1925' (2000) 33 *Journal of Social History* 825.

³⁴ See Sara Kimble, 'Justice Redressed: Women, Citizenship, and the Social Uses of the Law in Modern France, 1890-1939' (PhD thesis, University of Iowa, 2002) at 32-3; and SC Hause with AR Kenney, *Women's Suffrage and Social Politics in the French Third Republic* (Princeton, Princeton University Press, 1984) at 24. There was also a report in the *New York Times*, 24 July 1892 at 5.

³⁵ According to Frank, Sarmisa Bilcescu was the first to graduate with the *docteur en droit* in Paris in 1890, and she then returned to her native Romania to practise law: see Frank, note 8 at 120-23; and Mossman, note 23 at 244 (and note 41).

³⁶ Jeanne Chauvin, *Cours de Droit Professé dans les Lycées de Jeunes Filles de Paris* (Paris, V Giard & E Brière, 1895).

context of Chauvin's application, Frank corresponded with women lawyers in a number of different jurisdictions to obtain evidence of women's success in the practice of law. In spite of Frank's efforts, however, Chauvin's claim was rejected by the Paris court in November 1897. Yet, the outcome in France was ultimately successful because the French National Assembly enacted amending legislation in 1900,³⁷ enabling Chauvin and other French women to gain admission to the bar – nearly two decades before women in Britain were entitled to become lawyers. Nonetheless, it seems that Chauvin may have experienced difficulty in obtaining sufficient work as an *avocat*, as she continued to support herself and her widowed mother by working primarily as a high school teacher in Paris, and practising law only on a part time basis; she never married. Chauvin died in 1926, and many details about her exact circumstances remain in the shadows. As another woman lawyer suggested on the twenty-fifth anniversary of Chauvin's admission to the bar, 'Who will ever know the difficulties Jeanne Chauvin had to endure?'³⁸

These brief sketches of four women, all of whom were trying to engage in the practice of law in different jurisdictions in 1897, reveal some similarities in their experiences. For example, it is clear that all of them were seeking admission to the legal professions on the basis of women's increasing access to higher education, including legal education, at the end of the nineteenth century, and there is evidence that all of them grew up in families that supported women's access to education. Their pioneering role in women's education is clearly evident: for example, Martin was the first woman to complete legal studies in Ontario, Sorabji and Orme were the first to obtain legal qualifications at Oxford and the University of London respectively, and it seems that Chauvin was only the second woman to obtain the doctorate in law at the University of Paris. From this perspective, all four of these women were extraordinarily accomplished. Yet, if we examine their lives from a different perspective, turning the kaleidocope, it appears that their accomplishments were somewhat less successful in the practice of law. Only Martin was able to sustain a full time law practice following her formal admission to the bar, and she died quite young – is it possible to speculate that there was considerable stress in her role as a woman in law in the early-20th century, which led to her heart attack at a young age? By contrast, Chauvin worked as a teacher while practising law only part time, apparently because of a lack of clients, while Sorabji was able to work only in a governmental position until she was finally able to gain formal admission to the bar nearly three decades after her BCL exams, and even then, she practised only sporadically. Meanwhile, Orme was engaged in legal practice without formal admission for nearly fifteen years before she obtained an LLB degree – and she never gained admission to the bar. Moreover, all four of these women who were trying to practice law in 1897 remained unmarried, a factor which appears more than coincidental, and which suggests that their participation in legal careers required that they remain 'independent women.'³⁹ In this context, their lives seem to confirm Virginia

³⁷ *Loi...*, note 21.

³⁸ Boigeol, note 20, citing M Véronne, 'Le 25e anniversaire des avocates: Souvenir du Palais,' *L'oeuvre*, 2 November 1925.

³⁹ Martha Vicinus, *Independent Women: Work and Community for Single Women 1850–1920* (London, Virago, 1985).

Drachman's assessment of early women lawyers in the United States, when she argued that their accomplishments were 'modest, not monumental'.⁴⁰

The kaleidoscope metaphor is also useful in looking at these women's lives from the perspective of contemporary feminism, more than a century after 1897. In fact, none of these four women appears to have provided much leadership in women's equality movements in the late-19th and early-20th centuries. For example, Constance Backhouse lamented the limited participation of Clara Brett Martin in women's reform movements in Canada.⁴¹ And although Eliza Orme was an active proponent of women's suffrage initially, she resigned from her leading role in the Women's Liberal Federation when it voted to put suffrage on its agenda *before* Gladstone's Liberal Party had adopted women's suffrage as Liberal Party platform; as a result, Orme was effectively sidelined from the suffrage movement thereafter.⁴² Similarly, Cornelia Sorabji was personally and politically conservative; as she described herself, she was 'a Tory of the Tories,' who only reluctantly yielded to 'the rush of Time,'⁴³ a stance which eventually positioned her in opposition to the Indian independence movement later in the 20th century. And although Chauvin initially worked with a woman's reform group to amend the civil codes in women's interest, there is little evidence of her continuing involvement after the group began to lobby for suffrage for French women.⁴⁴ In this context, all four of these first women lawyers cannot, I think, be regarded as 'rebel women.'⁴⁵

Yet, turning the kaleidoscope again and viewing them from another perspective, it is clear that these women were all the first to try to forge careers in the 'gentleman's profession' of law *on their own terms*.⁴⁶ Like other late-19th century women, who engaged in independent work rather than marriage, these first women in law may have relished the challenges presented by entry to the legal professions, and the opportunities for independent action and self-sufficient lives. Thus, in confronting competing ideas about 'women's equality' and about legal 'professionalism' at the end of the 19th century, they relied on the rhetoric of equality to open up opportunities for women to become lawyers, even though this rhetoric substantially failed to challenge more fundamental aspects of professional culture in the practice of law. I think that it is significant that women lawyers in the late-19th century were often portrayed in the media of the time as 'Portias,' a reference to Shakespeare's famous character in *The Merchant of Venice*.⁴⁷ Yet, it is clear that Portia was able to provide her effective advocacy

⁴⁰ Drachman, note 14 at 8. See also Carol Sanger, 'Curriculum Vitae (Feminae): Biography and Early American Women Lawyers' (1994) 46 Stanford Law Review 1245.

⁴¹ Backhouse, note 16 (CJWL) at 37.

⁴² P Gordon and D Doughan, *Dictionary of British Women's Organizations 1825–1960* (London, Woburn Press, 2001) at 173.

⁴³ Sorabji papers, note 28: F165/20: letter to Mrs A Darling, 17 October 1897.

⁴⁴ Hause with Kenney, note 34 at 56–7 and 112–13.

⁴⁵ J Eldridge Miller, *Rebel Women: Feminism, Modernism and the Edwardian Novel* (London, Virago Press, 1994). See also Ruth Brandon, *The New Women & the Old Men* (London, Flamingo, 1991).

⁴⁶ Lerner, note 2.

⁴⁷ For two examples, see 'Portias of Today' (13 November 1897) *The Illustrated London*

in the trial scene in the play *only* because she was disguised as a man. In this way, as the American historian Michael Grossberg has argued, the first women in law entered the legal professions *without challenging* their gender premises.⁴⁸ In this context, the kaleidoscope metaphor provides different ways of seeing how these four women in law in different parts of the world in 1897 responded to the challenges of gender and professionalism; in addition, it provides an opportunity to reflect on Ethel Benjamin and the need for 'new questions' about women and the legal professions.

III. Ethel Benjamin⁴⁹ and 'New Questions' about Women and the Legal Professions

In this exploration of the history of women and of the legal professions, Ethel Benjamin's experiences present some important and arguably different challenges. I am going to reflect on three of them: the circumstances of her admission to the bar, her experiences as a legal practitioner, and her subsequent decision to marry and move to Britain, abandoning her legal career just a decade after she entered the legal profession in New Zealand. In reflecting briefly on these aspects of Benjamin's career, I argue that her life provides an interesting contrast to the experiences of these other four women in law in 1897, and points to some 'new questions' about the relationships of gender and legal professionalism at the end of the 19th century.

1. *Admission to the bar*

When Benjamin was called to the bar in 1897, two aspects of her circumstances were particularly significant. One was that the statutes permitting women to become members of the legal profession had been enacted *the year before* in 1896;⁵⁰ thus, once Benjamin had met all the required qualifications, she was readily admitted to the bar. Although it is clear that the admission of women as members of the New Zealand legal profession was not without controversy in the 1890s, it is possible that the enactment of women's suffrage in New Zealand in 1893, with the resulting need to respond to a new female voting constituency, may have contributed to the enactment of the 1896 statutes concerning women lawyers – in the absence of any litigated challenge. Thus, by contrast with Martin, Sorabji and Chauvin, all of whom had to challenge the legal professions' exclusion of women directly, Benjamin was not required to engage in litigation or lobbying to gain admission to the bar in 1897. Moreover, Judge Williams expressed a warm welcome when she was admitted to the bar in May, and then in July, she was

News 696–7; and Randall Blackshaw, 'A Parsee Portia: Miss Cornelia Sorabjee, Oxford Graduate, Lawyer and Author Too' (1903) 43 *Critic and Good Literature* 432.

⁴⁸ Michael Grossberg, 'Institutionalizing Masculinity: The Law as a Masculine Profession' in Mark C. Carnes and Clyde Griffen (eds), *Meanings for Manhood: Constructions of Masculinity in Victorian America* (Chicago and London, University of Chicago Press, 1990) at 148.

⁴⁹ Mossman, note 23 at chapter 4. See also Brown, note 8 and Gatfield, note 8.

⁵⁰ The Female Law Practitioners Act 1896, SNZ 1896, c 11 (royal assent 11 September 1896); and The Law Practitioners and New Zealand Law Society Acts Amendment Act 1896, SNZ 1896, c 22 (royal assent 12 October 1896).

selected to speak at her university convocation, the first time that a woman spoke at such a ceremonial occasion at the University of Otago. Having regard to her subsequent experiences as a member of the legal profession, it is arguable that Benjamin's early experiences may have created some unwarranted expectations of egalitarianism and collegiality for women in the practice of law.

By contrast, Martin's admission experience in Ontario, including her continuing battle with the Law Society, as well as the need to lobby for two legislative amendments, all before she gained admission to the bar, clearly demonstrated the profession's lack of support for women who challenged its traditional norms. Thus, it is possible that the skills she learned in the process of gaining admission to the bar were useful to Martin later on in her legal practice. This possible explanation is also interesting because Martin and Benjamin were both very young at the time of their admission to the bar in 1897: Benjamin was twenty-two and Martin was probably twenty-three. By contrast, in 1897, Sorabji was thirty-one, Chauvin was thirty-five, and Orme was forty-nine; thus, these three women had likely already experienced the impact of gender on their opportunities for professional work by 1897. In this context, Benjamin seems to have been the only one who was both young, and also relatively inexperienced in terms of opposition to women in law, in 1897. Indeed, her letter to Louis Frank,⁵¹ dated 21 December 1897, clearly reflects considerable hopefulness and idealism about her chosen career:

Albert Buildings
Dunedin

The receipt of your letter afforded me much pleasure, and I must ask pardon for not replying sooner, but my time has been so much occupied that until now I have scarcely had a spare moment in which to write. I was much interested in reading the account of your advocacy of the claims of women to practise at law, and I sincerely trust that your efforts in this direction generally, and particularly those on behalf of Mdlle Chauvin will ere long be crowned with success. Only the other day a clipping from one of the London papers was sent to me announcing that Mdlle Chauvin was determined to demand admission to the Bar. It was said that the authorities would refuse to permit her to plead, but I trust that this prognostication will not prove correct and that the right of Mdlle Chauvin and of all duly qualified women to practise as advocates will before long be recognised by the Courts of France and of all civilised countries.

In reply to your query – I am the first woman to practise as a barrister or solicitor in New Zealand and I am, I believe, the only one in practice at the present time in the Southern Hemisphere.

[Benjamin enclosed clippings, saying] On page 12 'St James Budget' of 29th October

⁵¹ *Papiers Frank, Bibliothèque Royale, Brussels # 7791–6*. The enclosed clippings and the photo were not included with this letter in the archival file. It is likely that the London clipping referred to by Benjamin was *The Illustrated London News*, 13 November 1897, which included sketches of a number of women lawyers in different parts of the world, including Martin from Canada, Sorabji from India and Chauvin from France. Benjamin's modernity is also evident in the fact that her letter was typed, not handwritten. For Frank's account of Benjamin in *La Femme-Avocat*, see Frank, note 8 at 70.

last and on page 616 of the 'Lady Pictorial' of the 30th October there are a few particulars of my career which might prove of interest to you.

I forward by same mail my Photo taken in my Graduate's Cap and Gown.

If there be any information that I can supply or if I can be of any assistance pray command me. I need hardly say that you have my hearty sympathy and good wishes for your championship of Mdle Chauvin's cause, and I wish you every success therein.

Hoping to hear before long of your achieving your object, and thanking you for your expression of goodwill towards myself, I am, Yours faithfully

[Signed] Ethel R Benjamin

2. *Experiences in the practice of law*

As is well-known, Benjamin's experiences in the practice of law were mixed. For example, it seems that she was excluded from some professional activities, particularly bar dinners, that she narrowly escaped having to process alone to the new court house in 1902, and that she complained to the Law Society in Wellington that she was not receiving referrals from other members of the bar in 1907. At the same time, her fearless advocacy on behalf of women who had been subjected to physical abuse by their husbands seems to have challenged traditional views about family law matters among male members of the legal profession in Dunedin, so that even Benjamin's vindication by the presiding judge, Sir Robert Stout, may not have improved her acceptance within the profession's culture. However, it is possible that her zealous defence of publicans in the controversial prohibition cases at the end of the 19th century creates the most difficult questions: why did Benjamin have to threaten legal action, and then reduce her fees, in order to receive payment for all her legal work on behalf of the Bruce publicans? To what extent did her role, as an owner and manager of hotels herself, affect her representation of the Bruce publicans and others? How were her family law clients, and especially her work as honorary solicitor to the Society for the Protection of Women and Children, affected by her representation of publicans? And to what extent did these issues affect her reputation in the legal profession more generally?

In focusing on these questions, three aspects of Benjamin's experiences as a practising lawyer seem significant. First, Benjamin was a 'lone voyager',⁵² the *only* woman lawyer in New Zealand for some years; even in neighbouring Australia, the first woman lawyer was not admitted to the bar until 1905.⁵³ Yet,

⁵² G Joncich Clifford (ed), *Lone Voyagers: Academic Women in Coeducational Universities 1870–1937* (New York, Feminist Press, 1989). See also P Migdal Glazer and M Slater, *Unequal Colleagues: The Entrance of Women into Professions, 1890–1940* (New Brunswick and London, Rutgers University Press, 1987).

⁵³ Grata Flos Greig obtained an LLB degree from University of Melbourne in 1903 and was admitted to the bar of Victoria in 1905, pursuant to the Women's Disabilities Removal Act 1903 (Vic). See also Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Melbourne, Oxford University Press, 1996) at 50–51.

unlike Sorabji, who was also the only woman engaged in legal work in India for almost two decades, Benjamin was practising alongside male lawyers and doing the same kind of legal work; by contrast, Sorabji was providing legal advice to *Purdahnashins*, who were prohibited from receiving advice from males, and thus, she was not invading the 'gentleman's profession' of law at all. Indeed, Benjamin's experience was not unlike Chauvin's in Paris; Chauvin gained admission to the bar after the enactment of legislation in 1900, but then found that she could not support herself with legal work, so that she continued to teach school while practising law only part time.

Second, Benjamin's difficulties with other members of the legal profession, in the context of both collegial relationships and referrals of work, provide a stark contrast to the experiences of Orme in Britain. Even though Orme was not admitted as a barrister or solicitor, it seems that her practice was a thriving success in the 1880s and 1890s, at least partly because of ongoing support and regular referrals from male barristers; moreover, it was reported that Orme even participated in a social occasion at which she joined with the men to smoke a cigar.⁵⁴ Thus, it seems ironic that Benjamin, as a full-fledged member of the legal profession in New Zealand, had less access to male support than Orme, who had no formal practice credentials in Britain. Yet, by contrast with Benjamin, it seems that Orme had consciously engaged male supporters at the University of London and among members of Lincoln's Inn in the process of establishing her practice, and, at the same time, she was an active participant in several elite women's organizations in Britain; in addition, she worked in partnership with another woman law graduate in her office in Chancery Lane so that she was not alone in her work. By contrast, Benjamin's arguments with the National Council of Women early on in 1898, and her apparent lack of ongoing support from male lawyers, as well as the fact that she worked alone, all rendered her situation much more vulnerable than Orme's. Perhaps more significantly, Orme's decision not to seek formal admission as a barrister or solicitor may have appeared less threatening, or at least more deferential, to members of the 'gentleman's profession,' while Benjamin had more openly challenged its gender exclusivity.

Finally, a third factor which may have created some increasing isolation for Benjamin in the New Zealand legal profession during the first decade of the 20th century was her Jewish identity. Thus, even though Benjamin's father was a successful business man in Dunedin, it is possible that the small Jewish population in Dunedin was somewhat isolated from the political and legal elite in New Zealand. There is also some suggestion that tolerance for Jews in New Zealand began to decline in the early-20th century with the arrival of Jewish refugees from the pogroms of eastern Europe,⁵⁵ a very different class of immigrant than Benjamin's stockbroker father who had emigrated to Dunedin in the midst of the gold rush several decades earlier. Such reflections about the impact of Benjamin's religious identity suggest comparisons with issues about

⁵⁴ Howsam, note 19 at 44; according to Howsam, Orme smoked a cigar at a meeting with the novelist George Gissing and his publisher.

⁵⁵ LM Goldman, *History of the Jews in New Zealand* (Wellington, AH and AW Reed, 1958) at 140–41.

antisemitism in the legal professions in North America in the early-20th century. For example, Martin became the subject of considerable controversy as a result of the discovery in the 1980s of her letter to the Attorney General several decades earlier, in which she had complained about real estate frauds being perpetrated entirely by 'Jews and foreigners'.⁵⁶ At least in the North American context, there is considerable evidence that ideas of legal professionalism in the early-20th century were often aligned with the creation of a professional hierarchy, in which Jews and foreigners were unwelcome. Thus, as Jerold Auerbach argued in a slightly different context in the United States, the legal profession often permitted a few 'outsiders' to become lawyers 'in return for their loyalty to dominant professional values',⁵⁷ values which included antisemitism and discrimination. It may also explain how Benjamin, who was young and inexperienced, as well as female and Jewish, encountered so many challenges in the practice of law in New Zealand in the early-20th century.

3. *The decision to marry and relocate to Britain*

From one perspective, Benjamin's decision to marry in 1907 and then to move to Britain to join her family there in 1908, appears incongruous with her firmly-stated determination to practise law just a decade earlier, particularly since women were not yet entitled to practise law in Britain. Yet, it is possible that Benjamin's decision was less about the abandonment of the practice of law than an interest in pursuing new and more desirable opportunities. It seems clear, for example, that both she and her husband were quite successful entrepreneurs and that Benjamin may have experienced a good deal more success in her business endeavours than in her law practice. In this context, she had choices and opportunities that were never available to women like Sorabji and Chauvin. Moreover, Benjamin decided to marry, by contrast with all of these other four women who were engaged in legal work in 1897.⁵⁸ In addition, once Benjamin and her husband arrived in Britain, it seems that their combined wealth enabled them to spend long periods each year in the south of France and in Italy; certainly, by contrast with the other four women who were engaged in becoming lawyers in 1897, Benjamin's estate at her death in 1943 was substantial.⁵⁹

⁵⁶ Mossman, note 23 at 111–12.

⁵⁷ JS Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (Oxford, Oxford University Press, 1977) at 6. For an assessment of antisemitism on the part of Myra Bradwell in the United States, see Sanger, note 40 at 1261 and 1272.

⁵⁸ Yet, it is also interesting that she did not cease to practise law immediately upon marrying, as was the pattern for many (although not all) women lawyers in the United States; that is, it was the decision to leave New Zealand that terminated her legal work, not her marriage, a factor that suggests both Benjamin's strong character and the nature of her marriage relationship. See also Drachman, note 14.

⁵⁹ Benjamin left an estate of £20,000, including shares and investments: see Brown, note 8 at 99. By comparison, Martin was described as leaving an estate of about C\$22,000 when she died in 1923, a reasonable estate but not a wealthy one; by contrast, although Orme was quite successful in her practice, she died at the age of eighty-eight in 1937, about thirty-five years after her retirement as a law practitioner, and her estate was valued at less than £800. Sorabji, who also died in Britain in 1954, had an estate valued at £3000. Although nothing is known of

IV. Conclusion: Ethel Benjamin as a 'Rebel Woman'?⁶⁰

In conclusion, I want to suggest that Ethel Benjamin is a particularly important example among the women who were first becoming lawyers at the end of the 19th century, and that her experiences suggest the need for attention to Joan Wallach Scott's 'new questions'⁶¹ about the history of women and the history of professions. First, although the stories of women's admission to the bar remain important, we need to pay more attention to their experiences as members of the legal professions: how do factors like age, the presence of male lawyers' support, connections to the women's movement, or the focus of women's legal work affect the 'terms of their incorporation' as members of the legal professions? Second, we need to take seriously the impact of the larger context of new, and often contested, ideas about women's equality and about professionalism in law to assess how women lawyers' opportunities and choices, and the 'terms of identity they establish[ed]' were shaped not only by gender, but also by issues of class, religion and race in the legal professions: how do we explain, for example, the impact of gender and religion for Benjamin in a context in which Saul Solomon, a male Jewish lawyer from Dunedin, became one of the first ten Kings Counsel appointed in New Zealand in 1910, just a few years after Benjamin left New Zealand forever? Was gender a more important constraint for Benjamin than her religious affiliation in her efforts to practise law effectively in the early-20th century, or was it the *combination* of her youth, her gender and her religion which limited her success? Or is there some other explanation altogether? And finally, we need to examine more closely some of the differences in women's personalities and allegiances: to what extent did Benjamin experience more difficulty in the practice of law, by contrast with women like Martin, Sorabji, Orme and Chauvin? How were factors like age, experience, or more conservative personalities related to women lawyers' success as members of the legal professions? In the context of Scott's 'new questions,' is it possible that these other women lawyers were more willing to attempt to 'mask' their differences from the group already 'inside' the profession, so that even though Benjamin may have 'crossed the threshold' more easily, she was not so well 'received' in the practice of law?

Although we don't yet have all the answers to these questions about the first women lawyers, my point is that in probing the life of Ethel Benjamin, and of other women who were aspiring to become lawyers in 1897, we need to explore how their stories connect the history of women and the history of professions, opening up 'new questions' about these relationships. As Carolyn Heilbrun suggested, the history of women requires us to 'reinvent [their] lives, discovering ... the processes and decisions, the choices and unique pain, that [lie] *beyond* [women's] life stories.'⁶² In this context, it may be important to reflect further on Ethel Benjamin, who had suggested in her Convocation address in 1897 that

Chauvin's estate when she died in France in 1926, it seems unlikely that she had achieved great wealth. For further details, see Mossman, note 23.

⁶⁰ See note 45.

⁶¹ Scott, note 1.

⁶² CG Heilbrun, *Writing a Woman's Life* (New York, Ballantyne Books, 1988) at 31 (emphasis added).

'it is the rebels who extend the boundary of the right.'⁶³ In this context, her life may reveal the extraordinary challenges which confronted 19th century women lawyers who dared to engage in any such rebellion.

⁶³

Brown, note 8 at 20, citing *Otago Daily Times*, 10 July 1897.

